

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re:)	
)	
Chesapeake Television License, LLC)	Docket No. 13-181
)	CSR No. 8818-N
Petition for Special Relief for Waiver of)	
Section 76.92(f) & 76.106(a) of the)	
Commission's Rules)	
To: The Secretary		
Chief, Media Bureau		

**CONSOLIDATED REPLY TO OPPOSITIONS TO
PETITION FOR SPECIAL RELIEF**

Chesapeake Television License, LLC ("Chesapeake Television"), licensee of WBFF(TV), Baltimore, Maryland, hereby files this Consolidated Reply¹ to the Oppositions to Petition for Special Relief filed by Anne Arundel County, Howard County, and Fox Television Stations, Inc. (collectively, the "Oppositions").² The Oppositions contend that the Commission should deny Chesapeake Television's Petition, arguing that the Petition does not provide the viewing data necessary to show that WTTG(TV), Washington, DC, is no longer significantly viewed in the Baltimore, Maryland Designated Market Area ("DMA"). The Oppositions are simply wrong.

Using a re-tabulation of Nielsen data, Chesapeake Television's Petition conclusively shows that WTTG had a 0.0 share and a 0.0 average weekly cume in both the February 2007 and

¹ Pursuant to Sections 76.7(c)(3) and 1.4(h) of the Commission's Rules, the instant Reply is timely filed.

² Although it has not yet been received by undersigned counsel, a so-called "Comment and Opposition of Anne Arundel Broadband DBA Broadstripe Against Chesapeake Television License, LLC" ("Broadstripe Opposition") was filed in the Docket on August 12, 2013. Based on the release of the FCC's Public Notice in this case, Oppositions and comments were due August 1, 2013. See Report No. 0400, *Special Relief and Show Cause Petitions* (July 12, 2013). The FCC's Rules do not allow an Opposition to be filed beyond twenty (20) days. See 47 C.F.R. § 76.7(b)(1). Consequently, Chesapeake Television hereby moves to strike the Broadstripe Opposition in its entirety because it was untimely filed. In any case, the Broadstripe Opposition does not make any additional relevant arguments beyond those of the other Oppositions and the justifications made for denying WTTG carriage in the Baltimore DMA made herein apply equally to the Broadstripe Opposition.

July 2007 data, combined, and the February 2008 and July 2008 data, combined.³ The Nielsen survey supplied by Chesapeake Television meets the required standard and shows that WTTG had *no measurable viewership* across the two-year period. Nevertheless, the Oppositions complain that the data Chesapeake Television supplied is “stale” or is “too small” a sample size.⁴ However, the reason for this is clear -- Nielsen could not uncover any more recent or additional information because, according to the record evidence, *few, if any, viewers are watching WTTG in the Baltimore DMA these days*. There may have been sufficient over-the-air viewership in 1972 to establish significantly viewed status, but, given the increasing number of viewing alternatives from viewers’ home stations in Baltimore, that level of viewership no longer exists today. This is clearly demonstrated by Nielsen’s research and studies. Based on Nielsen’s showings, which precisely meet the FCC’s well established criteria, Chesapeake Television appropriately asked the Bureau to waive the significantly viewed exception.

In contrast to Chesapeake Television’s careful documentation of the Nielsen survey data, the Oppositions are fatally deficient and the Bureau should not consider them because they do not submit any Nielsen data at all. In essence, the Oppositions criticize Chesapeake Television’s studies as being “dated”. But no party offers more recent viewing data showing that WTTG currently meets the standard to establish significant viewing levels. Indeed, they offer no evidence of viewing of WTTG in the Baltimore DMA at all.

The Howard County and Fox Oppositions cannot meet the requirement to state the name and qualifications of the persons who reviewed their “data,” and more importantly, fail to include any kind of “detailed full showing, supported by affidavit, of any facts or considerations relied

³ As the DC Circuit has ruled, and the Commission is obligated to observe, “if a station’s viewership falls to nearly zero ... it is obviously illogical for the Commission to deem the station significantly viewed.” *KCST-TV, Inc. v. FCC*, 699 F.2d 1185, 1193 n.13 (D.C. Cir. 1983).

⁴ See Anne Arundel County Opposition at 6; Howard County Opposition at 2; Fox Opposition at 2.

on,” as required by Section 76.7(b)(1).⁵ The unsupported and generalized Declaration supplied by Anne Arundel County in its Opposition is also inadequate in that it points to no ratings data. In other words, the Oppositions have not submitted any cognizable evidence on which to base a challenge to the Nielsen report that supports Chesapeake Television’s Petition. Instead, the Oppositions offer only remarkably general and wholly unsupported assertions that should not be considered because they are not supported by any relevant facts.⁶ The Chesapeake Television Petition submitted a statistically valid average of two sweeps periods, as permitted by longstanding precedent. Chesapeake Television was not required to submit more.⁷

At bottom, each of the Oppositions claims, in one way or another, that WTTG is a “Baltimore-Washington area” station.⁸ While Washington, DC and Baltimore may be relatively close for two large markets, they are by no means the same market. Nielsen, BIA Financial, and the FCC’s own regulations clearly establish that *Baltimore, Maryland and Washington, DC are separate DMAs and the stations at issue in this case are licensed to separate markets.*⁹ WTTG is a Washington, DC DMA station, licensed to Washington, DC, the hub community of the market itself, and is *not* a Baltimore station. WBFF is the Fox affiliate licensed to Baltimore, Maryland, the hub community of its market.

⁵ 47 C.F.R. § 76.7(b)(1).

⁶ Fox makes the irrelevant argument that over-the-air home viewing is up across the United States (at Page 3, although Fox failed to include page numbers in its Opposition). What Fox fails to understand is that the significantly viewed standard is based on proportion, and not absolute numbers. Consequently, growing over-the-air numbers (particularly on a national level), mean absolutely nothing regarding whether or not WTTG is actually viewed in Baltimore (which it is not).

⁷ The Media Bureau can easily distinguish cases in which a petitioner has had to go back in time to identify a reporting period with a sufficient number of in-tabs to meet the FCC’s requirements (a hurdle WBFF cleared in this case) from those in which a petitioner may be relying on old data to cherry-pick those survey periods that show viewing below the threshold, when some viewing is present. *See, e.g., Gulf-California Broadcast Company*, 21 FCC Rcd 3476 (2006). Here, WTTG had a *zero* share and *zero net weekly circulation* in all of the survey periods presented. With zero viewing in all of these nearby communities in all of the survey periods spanning two years as required, it is clear that Chesapeake Television is not cherry-picking to skew reported viewing below the threshold.

⁸ For example, *see* Fox Opposition at 1. For Fox to ignore the obvious fact that Baltimore and DC are not the same market demonstrates the lengths Fox will go to obscure the facts of this case.

⁹ *See, e.g., BIA, Investing in Television*, 2013.

The fact that WTTG is entitled to carriage in the Baltimore DMA underscores the fundamental unfairness of the FCC's out of date 1972 rules. To think that WTTG, based on the analog low-VHF signal it had more than forty years ago, is nevertheless entitled to be carried by Baltimore cable systems, is patently absurd. By comparison, WBFF's signal extends well into Prince William and Loudon counties in Virginia in the DC DMA, and yet WBFF is not entitled to comparable carriage in the DC market. Washington DC is a significantly wealthier and larger market than Baltimore, and residents, viewers, and stations in Baltimore have a right to not have their economic base siphoned off by a station based in DC.

In any case, all the opposing parties make a great deal of noise about the Nielsen survey supplied by Chesapeake Television being conducted "prior to the digital transition" and that the study does not reflect viewing in the current digital environment.¹⁰ Fox even refers to "a renaissance" in signal coverage by WTTG today.¹¹ To the contrary, while not going back that far in history, as shown in the attached Engineering Exhibit prepared by John Hidle of Carl T. Jones Corporation, in the original DTV Table of Allotments (Appendix B in the Sixth R&O on April 3, 1997),¹² WTTG was allotted a DTV facility on channel 36 with 1000 kW ERP at 235 meters HAAT. The analog station on Channel 5 was licensed 100 kW at 235 meters HAAT. In the Table, on page B-8, WTTG's digital area and population during the transition was given as 26,351 square kilometers and 6,530,000 persons. The then-existing NTSC service was given as a larger 26,711 square kilometers and 6,533,000 persons.¹³ As the attached Exhibit conclusively illustrates, the WTTG signal is smaller now than it was then and the station's contour used to

¹⁰ See Anne Arundel County Opposition at 6; Howard County Opposition at 3; Fox Opposition at 2.

¹¹ Fox Opposition at 2.

¹² See Exhibit 1.

¹³ The DTV/NTSC service area match was given as 95.9%. These population numbers are from the 1990 US Census.

extend significantly into parts of Pennsylvania that it no longer covers, despite what all the Petitions incorrectly allege.¹⁴

The Oppositions also go to great lengths to point out that Baltimore and DC are “close”, but “close” is not the primary issue in this case. The rules are specific. Proximity is not the issue. Viewership is the issue. Baltimore and DC are different markets under Section 76.54 of the Commission’s Rules (and Section 76.51 of the rules for that matter). WTTG can only be thought of as somehow relevant to the communities at issue if it can show that anyone in those communities is actually watching its over-the-air signal, which the Oppositions have been unable to do. This is not a market modification case where issues of commuting patterns or community connections might properly be considered. This is a significant viewing case in which the only relevant inquiry is the out-of-market station’s viewing numbers. And the numbers by any standard show no measured viewing of WTTG by residents in the communities that are the subject of the Petition. Chesapeake Television respectfully submits that the FCC cannot base a ruling on general notions of comity and feel-good notions of “ties” between DC and Baltimore as the Oppositions contend. Under FCC precedent, the actual ratings data provided by Nielsen must prevail.

¹⁴ In Section 73.622(e)(2) of the Commission’s Rules, there is a note specific to those UHF DTV allotments that are truncated at 1000 kW. In almost all instances where a low-VHF (Channels 2-6) station is “replicated” on a UHF channel, the resulting 41 dBu digital coverage area is smaller than the corresponding analog 47 dBu Grade B contour. *See* the attached map showing the results for WTTG. The maps for WTTG shown in the 2007 edition of TV Factbook confirm these results. Also, the 41 dBu digital noise limited contour is where the digital signal is no longer viewable at all (*i.e.*, the blue screen that we all have seen in the digital world). Conversely, the analog Grade B of WTTG provided a TASA grade 3 signal which was noisy but was viewable, unlike the station’s current digital signal in many areas today.

Conclusion

For the foregoing reasons and those noted in the Petition, Chesapeake Television respectfully requests that the FCC deny the Oppositions and grant the relief requested in the Petition.

Respectfully submitted,

By: 
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Paul A. Cicelski

Counsel for Chesapeake Television License, LLC

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Dated: August 14, 2013

EXHIBIT 1

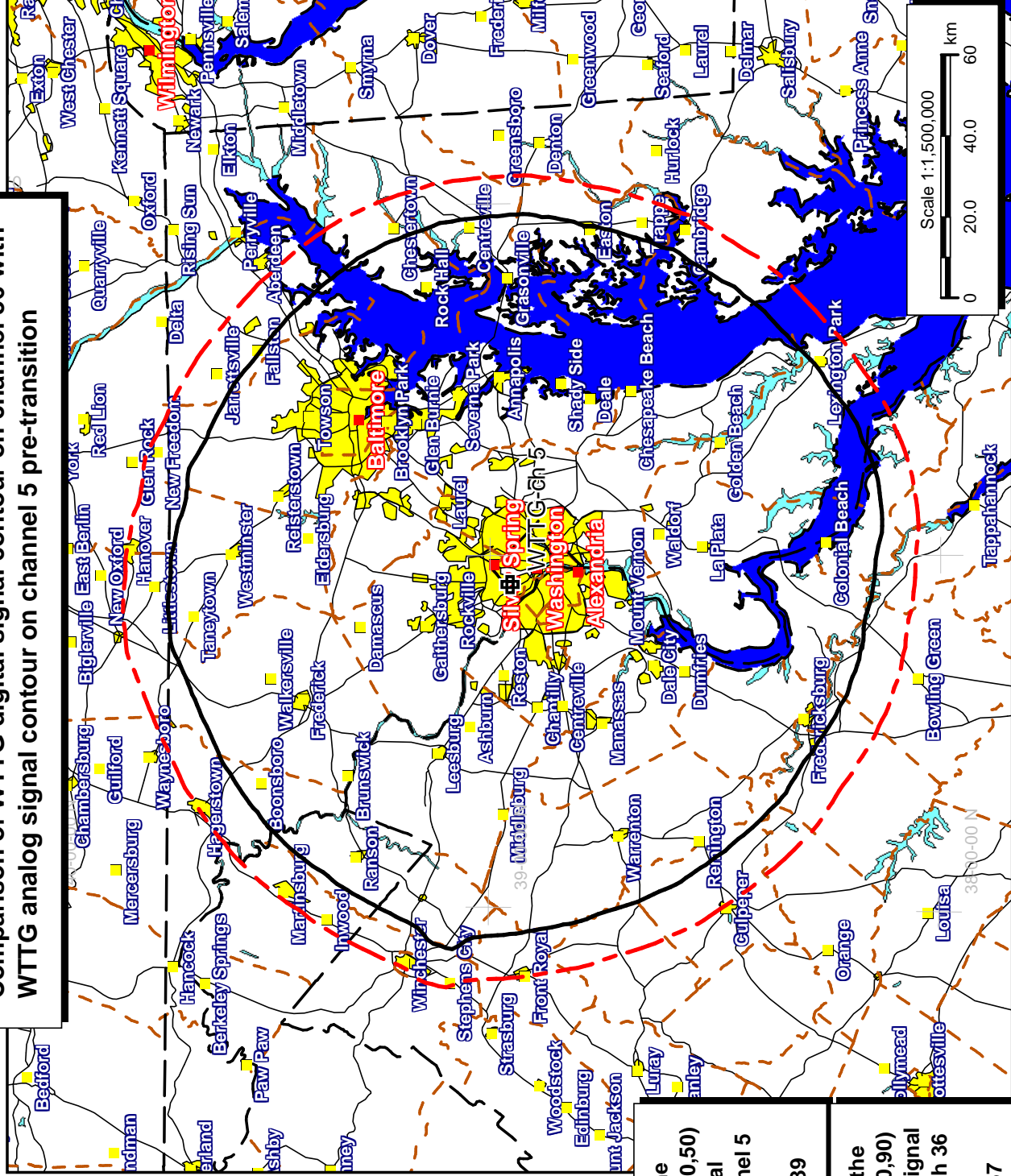
WTTG-D
BLCDT20080507AAA
Latitude: 38-57-22 N
Longitude: 077-04-59 W
ERP: 1000.00 kW
Channel: 36
Frequency: 605.0 MHz
AMSL Height: 295.8 m
Elevation: 104.8 m
Horiz. Pattern: Omni
Vert. Pattern: Yes
Elec Tilt: 0.5
Prop Model: None

WTTG-ch 5
Latitude: 38-57-21 N
Longitude: 077-04-57 W
ERP: 100.00 kW
Channel: 5
Frequency: 57.0 MHz
AMSL Height: 305.554 m
Elevation: 104.758 m
Horiz. Pattern: Omni
Vert. Pattern: No
Prop Model: None

The red contour is the
predicted 47 dBu F(50,50)
Grade B analog signal
from WTTG on channel 5
Area = 29,915 sq km
Population = 8,740,239

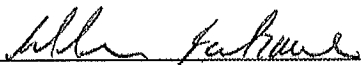
The black contour is the
predicted 41 dBu F(50,90)
Noise-limited digital signal
from WTTG DTV on ch 36
Area = 23,857 sq km
Population = 8,071,057

Comparison of WTTG digital signal contour on channel 36 with
WTTG analog signal contour on channel 5 pre-transition



DECLARATION

I, William Fanshawe, Group Manager for Sinclair Broadcast Group, Inc., hereby declare under penalty of perjury that I have reviewed the foregoing "Consolidated Reply to Oppositions to Petition for Special Relief" and except for (a) matters cited therein contained in the FCC's records, (b) matters for which other support is provided, and (c) matters of which the Commission may take official notice, the facts set forth therein are true and correct to the best of my personal knowledge and belief.



William Fanshawe

Dated: August 14, 2013

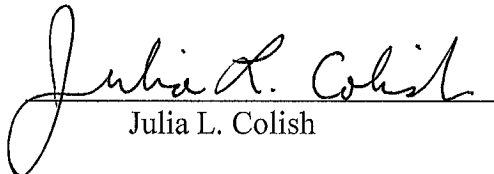
CERTIFICATE OF SERVICE

I, Julia Colish, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that copies of the foregoing **“PETITION FOR SPECIAL RELIEF”** were served via U.S. Mail on this 14th day of August 2013 to the following:

RCN Corporation President Plaza, Bldg. 1 196 Van Buren St., Ste. 300 Herndon, VA 20170	Armstrong Cable Services One Armstrong Place Butler, PA 16001
Atlantic Broadband 330 Drummer Drive Grasonville, MD 21638	Easton Cable Attn: William D. Russell Cable & Communications Dept. Manager 201 N. Washington St. Easton, MD 21601
Regional Office for Maryland 406 Headquarters Dr., Suite 201 Millersville, MD 21108	Broadstripe 13455 Noel Road, Suite 1310 Dallas, TX 75240
MetroCast Communications 233 Colonial Ave Colonial Beach, VA 22443	MetroCast Communications 43920 Airport View Drive Hollywood, MD 20636
Verizon 1320 North Courthouse Road 9 th Floor Arlington, VA 22201	MetroCast Communications 11387 Ridge Road King George, VA 22485-4048
Citizens Telephone Coop. 201 East Main Street, Suite 5 Floyd, VA 24091-0159	Cox Communications 1400 Lake Hearn Drive Atlanta, GA 30319
Department of Technology and Communication Services 3450 Court House Drive Ellicott City, MD 21043	Howard County Executive 3420 Courthouse Drive Ellicott City, MD 21043
Mayor's Office Government of the City of Annapolis 160 Duke of Gloucester Annapolis, MD 21401	John R. Leopold County Executive The Arundel Center 44 Calvert St. Annapolis, MD 21404-1831

Margaret Ann Nolan Melissa Shane Whipkey Howard County Office of Law 3450 Court House Drive Ellicott City, MD 21043	Gail A. Karish BEST BEST & KRIEGER LLP 2855 East Guasti Road Suite 400 Ontario, CA 91761
WJLA-TV ACC Licensee, LLC C/O WCIV 888 Allbritton Boulevard Mount Pleasant, SC 29464	Bel Air Town Administrator 39 N. Hickory Avenue Bel Air, MD 21014
WFDC-DT Telefutura D.C. LLC 5999 Center Drive, Suite 4083 Los Angeles, CA 90045	WUSA Detroit Free Press, Inc. c/o Gannett Co., Inc. 7950 Jones Branch Dr. McLean, VA 22107
WFPT Maryland Public Broadcasting Commission 11767 Owings Mills Boulevard Owings Mills, MD 21117	WNVC Commonwealth Public Broadcasting Corporation 8101A Lee Highway Falls Church, VA 22042
WHUT-TV Howard University 2222 4 th Street, N.W. Washington, DC 20059	WETA-TV Greater Washington Educational Telecommunications Assn. 2775 South Quincy Street Arlington, VA 22206
WDCA FOX Television Stations, Inc. c/o Dianne Smith 5151 Wisconsin Ave., NW Washington, DC 20016	WNVT Commonwealth Public Broadcasting Corporation 8101A Lee Highway Falls Church, VA 22042
WMDO-CA Entravision Holdings, LLC 2425 Olympic Blvd., Suite 6000 W Santa Monica, CA 90404 - 4030	WPXW-TV ION Media Washington License, Inc. 601 Clearwater Park Road West Palm Beach, FL 33401

WDCW WDCW Broadcasting, Inc., Debtor-In-Possession 2121 Wisconsin Avenue, Suite 350 Washington, DC 20005	WTTG FOX Television Stations, Inc. 5151 Wisconsin Ave., N.W. Washington, DC 20016
WJZ-TV CBS Corporation 1800 K Street, N.W., Suite 920 Washington, DC 20006	WRC-TV NBC Telemundo License Co. 1299 Pennsylvania Avenue, NW 9th Floor Washington, DC 20004
WMPB Maryland Public Broadcasting Commission 11767 Owings Mills Boulevard Owings Mills, MD 21117	WBAL-TV 11 3800 Hooper Ave. Baltimore, MD 21211
WNUV Baltimore (WNUV-TV) Licensee, Inc. 2000 West 41st Street Baltimore, MD 21211	WMJF-LP Towson University c/o WMJF, Department of Electronic Media & Film Towson, MD 21252 - 0001
WMPT Maryland Public Broadcasting Commission 11767 Owings Mills Boulevard Owings Mills, MD 21117	WMAR-TV Scripps Media, Inc. 312 Walnut Street, 28th Floor Cincinnati, OH 45202 - 4067
FOX Television Stations, Inc. Attn: Joseph M. Di Scipio 444 North Capitol Street, NW Suite 740 Washington, D.C. 20001	WUTB Fox Television Stations, Inc. 444 N. Capitol ST, NW, Suite 740 c/o Dianne Smith Washington, DC 20001
Stephen Ross, Esq. 3015 Fernwood Avenue Los Angeles, CA 90039	


Julia L. Colish